

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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FRANK TADDEO and AMELIA TADDEO,

Case No. 2:12-cv-01110-APG-NJK

Plaintiffs,

V.

AMERICAN INVSCO CORPORATION, *et al.*

**ORDER (1) GRANTING IN PART AND
DENYING IN PART RENEWED
MOTION FOR ATTORNEY'S FEES
AND (2) GRANTING IN PART AND
DENYING IN PART BILL OF COSTS**

Defendants.

(Dkt. #190, #265)

Defendants American Invesco Corporation, Condominium Rental Services, Inc. (“CRS”), and Nicholas Gouletas¹ renew their motion for attorney’s fees and costs related to the securities claims brought against them. I previously ruled that these three defendants are entitled to recover attorney’s fees and costs incurred in defending against the securities claims only. (Dkt. #251 at 8.) I therefore directed them to file supporting documentation and to apportion their fees to reflect only (1) fees incurred in defending against the securities claims and (2) fees related to this case. (*Id.*)

The defendants contend they incurred the relevant fees while this matter was still part of the consolidated action under case number 2:08-cv-01463-KJD-RJJ. In defending against the securities claims, the defendants filed a motion for more definite statement and reply, and two

¹ Defendant Gouletas filed a notice of bankruptcy. (Dkt. #312.) The filing of a petition for bankruptcy operates as an automatic stay of the commencement or continuation of any action against a bankrupt debtor or against the property of a bankrupt estate. 11 U.S.C. § 362(a). A ruling awarding fees to the moving defendants, including Gouletas, does not violate the automatic stay because it is consistent with the two primary purposes behind the automatic stay: protecting the debtor against collection efforts by creditors and protecting the debtor’s creditors vis-à-vis each other. *Dean v. Trans World Airlines, Inc.*, 72 F.3d 754, 755-56 (9th Cir. 1995). In granting the motion for attorney’s fees, I need not “consider other issues presented by or related to the underlying case” because prior to Gouletas filing for bankruptcy, I had already determined the defendants were entitled to fees and only the amount is now at issue. *Id.* at 756. My ruling awarding Gouletas fees will not harm the estate. *Id.* at 756-57. Rather, awarding Gouletas fees would “inure to the benefit of the bankruptcy estate.” *Parker v. Bain*, 68 F.3d 1131, 1138 (9th Cir. 1995) (quotation omitted).

1 motions to dismiss and replies. The defendants incurred a total of \$59,366.40 in attorney's fees in
2 relation to these documents. The defendants acknowledge that their billing statements do not
3 break out the fees incurred specifically in defending against the securities claims. The defendants
4 thus suggest either a fifty percent reduction or that I make my own adjustment. As to
5 apportionment related to this case, the defendants suggest that the plaintiffs bear either (1) fifty
6 percent of the fees incurred because of their prominent role in the formerly consolidated action or
7 (2) one sixth of the fees because the consolidated action was subsequently broken into six federal
8 lawsuits.

9 The plaintiffs respond that the filings upon which the defendants base their fee request
10 show that only a fraction of those documents addressed the securities claims, and thus the
11 \$59,366.40 must be reduced to reflect only the portions of those documents devoted to the
12 securities claims. Alternatively, the plaintiffs suggest an apportionment of ten percent because
13 the securities claims were approximately ten percent of the claims the plaintiffs brought. The
14 plaintiffs contend that whatever method used, the amount of fees must be reduced even further
15 because the motions and replies at issue were filed on behalf of several defendants, not just the
16 three who were awarded fees. The plaintiffs also suggest a one sixth case apportionment.

17 Defendants CRS and Nicholas Gouletas separately filed a bill of costs based on their
18 status as prevailing parties under Rule 54. (Dkt. #190.) The plaintiffs argue these defendants
19 should not be awarded any costs because they did not apportion by defendant or by case.

20 **A. Renewed Motion for Attorney's Fees & Costs for Securities Claims (Dkt. #265)**

21 As stated in my prior Order, the defendants are entitled to recover attorney's fees incurred
22 in defending against the securities claims only. The defendants have identified six documents
23 they prepared in defending against these claims. (Dkt. Nos. 81, 173, 341, 369, 709, and 760 in
24 2:08-cv-01463-KJD-RJJ.)

25 The first of these documents is a 25-page motion for more definite statement filed on
26 behalf of the moving defendants and six other defendants. (Dkt. #81 in 2:08-cv-01463-KJD-RJJ.)
27 Of those 25 pages, less than two full pages are devoted to the securities claims. (*Id.* at 21-22.)

1 Because the allegations in the first amended complaint² were unclear about precisely which
2 defendants were accused of the securities violation, a reduction based on the other defendants on
3 whose behalf the motion was filed is not warranted.

4 The next document is the 18-page reply to the motion for more definite statement. (Dkt.
5 #173 in 2:08-cv-01463-KJD-RJJ.) Four and a half pages are devoted to the securities claims. (*Id.*
6 at 11-16.) However, the complexity of the arguments related to the securities claims in the reply
7 warrant apportioning a greater percentage of the fees incurred on the reply brief than the page
8 count alone might suggest. Like the motion, no reduction based on the motion being filed on
9 behalf of other defendants is warranted.

10 The next four documents do not separately address the securities claims. Instead, they
11 argue that all of the plaintiffs' claims suffered from various defects. (Dkt. Nos. 341, 369, 709, and
12 760 in 2:08-cv-01463-KJD-RJJ.) These filings were made on behalf of nine defendants, only
13 three of which are entitled to recover fees based on the securities claims. (*Id.*)

14 Because only a portion of the documents the defendants base their fee request on dealt
15 with the securities claims, and because several of those documents were filed on behalf of
16 defendants who are not entitled to recover fees, I apportion one quarter of the fees incurred in
17 preparing these documents to the securities claims on behalf of the three moving defendants. The
18 amount apportioned to the securities claims therefore is \$14,841.60.

19 As for apportionment by case, the parties respectively argued for a one sixth claim
20 apportionment among the six formerly consolidated cases. I agree. The fees therefore shall be
21 further apportioned by one sixth, resulting in a total attorney's fee award of \$2,473.60.

22 As for costs, the defendants presented no information regarding costs relating specifically
23 to defending the securities claims or cost apportionment. I therefore award no costs on the basis
24 of the defendants prevailing on the securities claims.

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² (Dkt. #1-3 at 30-31.)

1 **B. Bill of Costs (Dkt. #190)**

2 Defendants CRS and Gouletas also filed a bill of costs based on their status as prevailing
3 parties under Rule 54. (Dkt. #190.) Pursuant to Federal Rule of Civil Procedure 54(d)(1),
4 “[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than
5 attorney’s fees—should be allowed to the prevailing party.” This Rule “creates a presumption in
6 favor of awarding costs to a prevailing party.” *Ass’n of Mexican-Am. Educators v. California*, 231
7 F.3d 572, 591 (9th Cir. 2000) (en banc). Despite this presumption, I have discretion to refuse to
8 award costs. *Id.* If I refuse costs, I must specify the reasons for doing so. *Id.*

9 These two defendants prevailed on all of the plaintiffs’ claims against them and thus are
10 presumptively entitled to recover costs. However, they are represented by the same attorneys that
11 represent American Invsc, who was not a prevailing party. CRS and Gouletas have not
12 apportioned for costs attributable to American Invsc. Nor have they apportioned costs
13 attributable only to this case or to the claims on which these two defendants prevailed, as opposed
14 to the claim on which American Invsc lost. These defendants request \$12,053.75 in costs.
15 Apportioning one sixth for this case reduces the costs to \$2,008.95. Additionally, I further
16 apportion among the three defendants to one third each. Thus, the final cost award to defendants
17 CRS and Gouletas as prevailing parties under Rule 54(d)(1) is \$1,339.30.

18 **C. Conclusion**

19 IT IS THEREFORE ORDERED that defendants American Invsc Corporation,
20 Condominium Rental Services, Inc., and Nicholas Gouletas’s renewed motion for attorney’s fees
21 and costs (**Dkt. #265**) is **GRANTED in part and DENIED in part**.

22 IT IS FURTHER ORDERED that the clerk of court shall enter judgment in favor of
23 defendants American Invsc Corporation, Condominium Rental Services, Inc., and Nicholas
24 Gouletas and against plaintiffs Frank Taddeo and Amelia Taddeo in the amount of \$2,473.60 in
25 attorney’s fees incurred in defending against the plaintiffs’ failed securities claims.

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1 IT IS FURTHER ORDERED that the clerk of court shall tax costs against plaintiffs Frank
2 Taddeo and Amelia Taddeo and in favor of defendants Condominium Rental Services, Inc., and
3 Nicholas Gouletas in the amount of \$1,339.30 (Dkt. #190).

4 DATED this 26th day of January, 2016.

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6 ANDREW P. GORDON
7 UNITED STATES DISTRICT JUDGE
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